

SECOND REGULAR SESSION

HOUSE BILL NO. 1494

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SEIGFREID.

Read 1st time January 16, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3795L.011

AN ACT

To repeal section 105.961, RSMo, and to enact in lieu thereof one new section relating to elections.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 105.961, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 105.961, to read as follows:

105.961. 1. Upon receipt of a complaint as described by section 105.957, the commission shall assign the complaint to a special investigator, who may be a commission employee, who shall investigate and determine the merits of the complaint. Within ten days of such assignment, the special investigator shall review such complaint and disclose, in writing, to the commission any conflict of interest which the special investigator has or might have with respect to the investigation and subject thereof. Within one hundred twenty days of receipt of the complaint from the commission, the special investigator shall submit the special investigator's report to the commission. The commission, after review of such report, shall determine:

(1) That there is reasonable grounds for belief that a violation has occurred; or

(2) That there are no reasonable grounds for belief that a violation exists and the complaint should be dismissed; or

(3) That additional time is necessary to complete the investigation, and the status and progress of the investigation to date. The commission, in its discretion, may allow the investigation to proceed for additional successive periods of one hundred twenty days each, pending reports regarding the status and progress of the investigation at the end of each such

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 period.

18 2. When the commission concludes, based on the report from the special investigator,
19 or based on an audit conducted pursuant to section 105.959, that there are reasonable grounds
20 to believe that a violation of any criminal law has occurred, and if the commission believes that
21 criminal prosecution would be appropriate upon a vote of **at least** four members of the
22 commission, the commission shall refer the report to the Missouri office of prosecution services,
23 prosecutors coordinators training council established in section 56.760, RSMo, which shall
24 submit a panel of five attorneys for recommendation to the court having criminal jurisdiction,
25 for appointment of an attorney to serve as a special prosecutor; except that, the attorney general
26 of Missouri or any assistant attorney general shall not act as such special prosecutor. The court
27 shall then appoint from such panel a special prosecutor pursuant to section 56.110, RSMo, who
28 shall have all the powers provided by section 56.130, RSMo. The court shall allow a reasonable
29 and necessary attorney's fee for the services of the special prosecutor. Such fee shall be assessed
30 as costs if a case is filed, or ordered by the court if no case is filed, and paid together with all
31 other costs in the proceeding by the state, in accordance with rules and regulations promulgated
32 by the state courts administrator, subject to funds appropriated to the office of administration for
33 such purposes. If the commission does not have sufficient funds to pay a special prosecutor, the
34 commission shall refer the case to the prosecutor or prosecutors having criminal jurisdiction.
35 If the prosecutor having criminal jurisdiction is not able to prosecute the case due to a conflict
36 of interest, the court may appoint a special prosecutor, paid from county funds, upon
37 appropriation by the county or the attorney general to investigate and, if appropriate, prosecute
38 the case. The special prosecutor or prosecutor shall commence an action based on the report by
39 the filing of an information or seeking an indictment within sixty days of the date of such
40 prosecutor's appointment, or shall file a written statement with the commission explaining why
41 criminal charges should not be sought. If the special prosecutor or prosecutor fails to take either
42 action required by this subsection, upon request of the commission, a new special prosecutor,
43 who may be the attorney general, shall be appointed. The report may also be referred to the
44 appropriate disciplinary authority over the person who is the subject of the report.

45 3. When the commission concludes, based on the report from the special investigator or
46 based on an audit conducted pursuant to section 105.959, that there are reasonable grounds to
47 believe that a violation of any law has occurred which is not a violation of criminal law or that
48 criminal prosecution is not appropriate, the commission [shall] **may** conduct a hearing which
49 shall be a closed meeting and not open to the public. The hearing shall be conducted pursuant
50 to the procedures provided by sections 536.063 to 536.090, RSMo, and shall be considered to
51 be a contested case for purposes of such sections. The commission shall determine, in its
52 discretion, whether [or not that] there is probable cause that a violation has occurred. If the

53 commission determines, by a vote of at least four members of the commission, that probable
54 cause exists that a violation has occurred, the commission may refer its findings and conclusions
55 to the appropriate disciplinary authority over the person who is the subject of the report, as
56 described in subsection 7 of this section. **If the commission determines by a vote of at least**
57 **four members that a hearing is not appropriate, the commission may, by a vote of at least**
58 **four members, seek an agreement with the party or parties determined to have violated the**
59 **provisions of subsection 1 of section 105.957, and the commission may collect a fee for such**
60 **violation in an amount not greater than one thousand dollars.** After the commission
61 determines by a vote of at least four members of the commission that probable cause exists that
62 a violation has occurred, and the commission has referred the findings and conclusions to the
63 appropriate disciplinary authority over the person **who is the** subject of the report, the subject
64 of the report may appeal the determination of the commission to the administrative hearing
65 commission. Such appeal shall stay the action of the Missouri ethics commission. Such appeal
66 shall be filed not later than the fourteenth day after the subject of the commission's action
67 receives actual notice of the commission's action.

68 4. If the appropriate disciplinary authority receiving a report from the commission
69 pursuant to subsection 3 of this section fails to follow, within sixty days of the receipt of the
70 report, the recommendations contained in the report, or if the commission determines, by a vote
71 of at least four members of the commission that some action other than referral for criminal
72 prosecution or for action by the appropriate disciplinary authority would be appropriate, the
73 commission shall take any one or more of the following actions:

74 (1) Notify the person to cease and desist violation of any provision of law which the
75 report concludes was violated and that the commission may seek judicial enforcement of its
76 decision pursuant to subsection 5 of this section;

77 (2) Notify the person of the requirement to file, amend or correct any report, statement,
78 or other document or information required by sections 105.473, 105.483 to 105.492, or chapter
79 130, RSMo, and that the commission may seek judicial enforcement of its decision pursuant to
80 subsection 5 of this section; and

81 (3) File the report with the executive director to be maintained as a public document; or

82 (4) Issue a letter of concern or letter of reprimand to the person, which would be
83 maintained as a public document; or

84 (5) Issue a letter that no further action shall be taken, which would be maintained as a
85 public document; or

86 (6) Through reconciliation agreements or civil action, [the power to] seek fees for
87 violations in an amount not greater than one thousand dollars or double the amount involved in
88 the violation.

89 5. Upon a vote of at least four members, the commission may initiate formal judicial
90 proceedings seeking to obtain any of the following orders:

91 (1) Cease and desist violation of any provision of sections 105.450 to 105.496, or chapter
92 130, RSMo, or sections 105.955 to 105.963;

93 (2) Pay any civil penalties required by sections 105.450 to 105.496 or chapter 130,
94 RSMo;

95 (3) File any reports, statements, or other documents or information required by sections
96 105.450 to 105.496, or chapter 130, RSMo; or

97 (4) Pay restitution for any unjust enrichment the violator obtained as a result of any
98 violation of any criminal statute as described in subsection 6 of this section.

99

100 The Missouri ethics commission shall give actual notice to the subject of the complaint of the
101 proposed action as set out in this section. The subject of the complaint may appeal the action
102 of the Missouri ethics commission, other than a referral for criminal prosecution, to the
103 administrative hearing commission. Such appeal shall stay the action of the Missouri ethics
104 commission. Such appeal shall be filed no later than fourteen days after the subject of the
105 commission's actions receives actual notice of the commission's actions.

106 6. In the proceeding in circuit court, the commission may seek restitution against any
107 person who has obtained unjust enrichment as a result of violation of any provision of sections
108 105.450 to 105.496, or chapter 130, RSMo, and may recover on behalf of the state or political
109 subdivision with which the alleged violator is associated, damages in the amount of any unjust
110 enrichment obtained and costs and attorney's fees as ordered by the court.

111 7. The appropriate disciplinary authority to whom a report shall be sent pursuant to
112 subsection 2 or 3 of this section shall include, but not be limited to, the following:

113 (1) In the case of a member of the general assembly, the ethics committee of the house
114 of which the subject of the report is a member;

115 (2) In the case of a person holding an elective office or an appointive office of the state,
116 if the alleged violation is an impeachable offense, the report shall be referred to the ethics
117 committee of the house of representatives;

118 (3) In the case of a person holding an elective office of a political subdivision, the report
119 shall be referred to the governing body of the political subdivision;

120 (4) In the case of any officer or employee of the state or of a political subdivision, the
121 report shall be referred to the person who has immediate supervisory authority over the
122 employment by the state or by the political subdivision of the subject of the report;

123 (5) In the case of a judge of a court of law, the report shall be referred to the commission
124 on retirement, removal and discipline, or if the inquiry involves an employee of the judiciary to

125 the applicable presiding judge;

126 (6) In the case of a person holding an appointive office of the state, if the alleged
127 violation is not an impeachable offense, the report shall be referred to the governor;

128 (7) In the case of a statewide elected official, the report shall be referred to the attorney
129 general;

130 (8) In a case involving the attorney general, the report shall be referred to the prosecuting
131 attorney of Cole County.

132 8. The special investigator having a complaint referred to the special investigator by the
133 commission shall have the following powers:

134 (1) To request and shall be given access to information in the possession of any person
135 or agency which the special investigator deems necessary for the discharge of the special
136 investigator's responsibilities;

137 (2) To examine the records and documents of any person or agency, unless such
138 examination would violate state or federal law providing for confidentiality;

139 (3) To administer oaths and affirmations;

140 (4) Upon refusal by any person to comply with a request for information relevant to an
141 investigation, an investigator may issue a subpoena for any person to appear and give testimony,
142 or for a subpoena duces tecum to produce documentary or other evidence which the investigator
143 deems relevant to a matter under the investigator's inquiry. The subpoenas and subpoenas duces
144 tecum may be enforced by applying to a judge of the circuit court of Cole County or any county
145 where the person or entity that has been subpoenaed resides or may be found, for an order to
146 show cause why the subpoena or subpoena duces tecum should not be enforced. The order and
147 a copy of the application therefor shall be served in the same manner as a summons in a civil
148 action, and if, after hearing, the court determines that the subpoena or subpoena duces tecum
149 should be sustained and enforced, the court shall enforce the subpoena or subpoena duces tecum
150 in the same manner as if it had been issued by the court in a civil action; and

151 (5) To request from the commission such investigative, clerical or other staff assistance
152 or advancement of other expenses which are necessary and convenient for the proper completion
153 of an investigation. Within the limits of appropriations to the commission, the commission may
154 provide such assistance, whether by contract to obtain such assistance or from staff employed
155 by the commission, or may advance such expenses.

156 9. (1) Any retired judge may request in writing to have the judge's name removed from
157 the list of special investigators subject to appointment by the commission or may request to
158 disqualify himself or herself from any investigation. Such request shall include the reasons for
159 seeking removal;

160 (2) By vote of **at least** four members of the commission, the commission may disqualify

a judge from a particular investigation or may permanently remove the name of any retired judge from the list of special investigators subject to appointment by the commission.

10. Any person who is the subject of any investigation pursuant to this section shall be entitled to be represented by counsel at any proceeding before the special investigator or the commission.

11. The provisions of sections 105.957, 105.959 and 105.961 are in addition to other provisions of law under which any remedy or right of appeal or objection is provided for any person, or any procedure provided for inquiry or investigation concerning any matter. The provisions of this section shall not be construed to limit or affect any other remedy or right of appeal or objection.

12. No person shall be required to make or file a complaint to the commission as a prerequisite for exhausting the person's administrative remedies before pursuing any civil cause of action allowed by law.

13. If, in the opinion of the commission, the complaining party was motivated by malice or reason contrary to the spirit of any law on which such complaint was based, in filing the complaint without just cause, this finding shall be reported to appropriate law enforcement authorities. Any person who knowingly files a complaint without just cause, or with malice, is guilty of a class A misdemeanor.

14. A respondent party who prevails in a formal judicial action brought by the commission shall be awarded those reasonable fees and expenses incurred by that party in the formal judicial action, unless the court finds that the position of the commission was substantially justified or that special circumstances make such an award unjust.

15. The special investigator and members and staff of the commission shall maintain confidentiality with respect to all matters concerning a complaint until and if a report is filed with the commission, with the exception of communications with any person which are necessary to the investigation. The report filed with the commission resulting from a complaint acted upon [under the provisions of] **pursuant to** this section shall not contain the name of the complainant or other person providing information to the investigator, if so requested in writing by the complainant or such other person. Any person who violates the confidentiality requirements imposed by this section or subsection 17 of section 105.955 required to be confidential is guilty of a class A misdemeanor and shall be subject to removal from or termination of employment by the commission.

16. Any judge of the court of appeals or circuit court who ceases to hold such office by reason of the judge's retirement and who serves as a special investigator pursuant to this section shall receive annual compensation, salary or retirement for such services at the rates of compensation provided for senior judges by subsections 1, 2 and 4 of section 476.682, RSMo.

197 Such retired judges shall by the tenth day of each month following any month in which the judge
198 provided services pursuant to this section certify to the commission and to the state courts
199 administrator the amount of time engaged in such services by hour or fraction thereof, the dates
200 thereof, and the expenses incurred and allowable pursuant to this section. The commission shall
201 then issue a warrant to the state treasurer for the payment of the salary and expenses to the extent,
202 and within limitations, provided for in this section. The state treasurer upon receipt of such
203 warrant shall pay the same out of any appropriations made for this purpose on the last day of the
204 month during which the warrant was received by the state treasurer.